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# FAQs Regarding the Emergency Paid Sick Leave Act Contained Within the Families First Coronavirus Response Act (H.R. 6201)



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## **FAQs Regarding the Emergency Paid Sick Leave Act Contained Within the Families First Coronavirus Response Act (H.R. 6201)**

Below are some questions members are frequently asking regarding the Emergency Paid Sick Leave Act (“EPSLA”) contained within H.R. 6201, the Families First Coronavirus Response Act (“FFCRA”).

### **1. What is the FFCRA, and how does it relate to the EPSLA?**

On March 18, 2020, President Trump enacted H.R. 6201, the Families First Coronavirus Response Act (“FFCRA”). The FFCRA includes numerous provisions, including two different coronavirus-related paid leave mandates for covered employers, one of which is The Emergency Paid Sick Leave Act (“EPSLA”).<sup>1</sup>

### **2. When does the EPSLA go into effect, and for how long?**

No later than 15 days after the FFCRA was enacted (i.e., no later than April 2, 2020). We advise preparing to implement the EPSLA immediately, however, because the Department of Labor may instruct the law to go into effect sooner. EPSLA will be in effect through December 31, 2020.

### **3. Who is a covered employer under the EPSLA?**

All private employers with fewer than 500 employees are covered under the EPSLA. EPSLA also applies to certain public employers.

### **4. Who is an eligible employee under the EPSLA?**

Any employee who is unable to work (or telework) due to a need for leave because:

- (1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- (2) The employee has been advised by a health care professional to self-quarantine due to concerns related to COVID-19.
- (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- (4) The employee is caring for an individual who is subject to an order as described in Paragraph (1) or (2) above.
- (5) The employee is caring for the son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
- (6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

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<sup>1</sup> The Hawaii Employers Council has prepared a separate FAQs regarding the other newly created paid leave provision of the FFCRA, the Emergency Family Medical Leave Expansion Act.



## 5. Is EPSLA paid?

Yes. Full-time employees receive 80 hours of paid sick leave. Part-time employees are entitled to leave based upon the average number of hours the part-time employee works over a two-week period.<sup>2</sup> The amount an employee must be paid depends on the reason they are taking leave:

- For reasons (1)-(3) in FAQ #4: Total paid leave at the employee's regular rate of pay is capped at \$511/day and \$5,110 in the aggregate per employee.
- For reasons (4)-(6): Total paid leave at two-thirds of their regular rate of pay, subject to a cap of \$200/day and \$2,000 in the aggregate per employee.

## 6. How do I determine the rate of pay for an employee with variable hours?

If the employee's schedule varies such that the employer cannot determine the number of hours the employee would have worked if the employee had not taken EPSLA leave, the following calculation applies:

(i) Subject to clause (ii), a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes such leave, including hours for which the employee took leave of any type.

(ii) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

## 7. Does the EPSLA impose any other requirements on employers?

Yes.

In addition to providing the paid leave, employers must:

- Post and keep posted a notice in conspicuous places. The Department of Labor will issue a model notice within seven days of the FFCRA's enactment (i.e., March 25, 2020).

Employers cannot:

- Discharge, discipline, or in any other matter discriminate against any employee taking paid leave under the EPSLA.
- Require the employee to use other paid leave before the employee uses EPSLA leave.
- Require the employee taking EPSLA leave to search for or find a replacement employee to cover the hours during which the employee is using EPSLA leave.

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<sup>2</sup> It is unclear whether the EPSLA applies to seasonal and on-call employees since the EPSLA refers only to two categories of employees – full-time and part-time.



## **8. Are there any exclusions that might apply to me?**

The Department of Labor has the authority to issue regulations to exclude:

- Certain health care providers and emergency responders from the definition of an employee including by allowing the employer of such health care providers and emergency responders to opt out;
- Small businesses with fewer than 50 employees “when the imposition of such requirements would jeopardize the viability of the business as a going concern”;<sup>3</sup> and
- As necessary.

## **9. Will the government help me pay for this?**

According to a [DOL news release](#), covered employers qualify for an immediate dollar-for-dollar reimbursement through tax credits for all qualifying wages (and health insurance costs) paid under the FFCRA. If a refund is owed, the IRS will send the refund as quickly as possible.

## **10. Does the employee have any obligations?**

After the first workday (or portion thereof) that an employee receives paid sick time, the employer may require the employee to follow reasonable notice procedures in order to continuing receiving EPSLA leave.

## **11. Do my contributions to a multi-employer bargaining agreement based on hours worked satisfy my EPSLA obligations?**

Yes.

## **12. If I already provide my employees with sick leave, do they get additional sick leave under the EPSLA?**

Yes, the emergency sick leave provided by the EPSLA is in addition to other leave provided by the employer.

## **13. If an employee was on a leave of absence prior to the effective date of EPSLA, and the leave is for a covered reason under the EPSLA, must an employer apply the EPSLA provisions retroactively?**

No. There is no retroactive provision in the EFLMLEA.

## **14. What else should I be aware of as I work to comply with the FFCRA?**

The DOL announced it “will be issuing a temporary non-enforcement policy that provides a period of time for employers to come into compliance with the act. Under this policy, Department of Labor will not bring an enforcement action against any employer for violations of

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<sup>3</sup> Although the DOL did not issue regulations as of the date of this publication, the DOL indicated in a [news release](#) that it indeed recognizes the small business exception and will issue guidance on the criteria to determine “jeopardy to the viability of an employer’s business as a going concern.”



the act so long as the employer has acted reasonably and in good faith to comply with the act. The Department of Labor will instead focus on compliance assistance during the 30-day period.”

